



U.S. Sentencing Commission
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NEWS RELEASE

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U.S. SENTENCING COMMISSION VOTES UNANIMOUSLY TO APPLY FAIR SENTENCING ACT OF 2010 AMENDMENT TO THE FEDERAL SENTENCING GUIDELINES RETROACTIVELY

Effective Date of Retroactivity Set for November 1, 2011

WASHINGTON, D.C. (June 30, 2011)—The United States Sentencing Commission voted unanimously today to give retroactive effect to its proposed permanent amendment to the federal sentencing guidelines that implements the Fair Sentencing Act of 2010. Retroactivity of the amendment will become effective on November 1, 2011— the same day that the proposed permanent amendment would take effect— unless Congress acts to disapprove the amendment.

“In passing the Fair Sentencing Act, Congress recognized the fundamental unfairness of federal cocaine sentencing policy and ameliorated it through bipartisan legislation,” noted Commission chair, Judge Patti B. Saris. “Today’s action by the Commission ensures that the longstanding injustice recognized by Congress is remedied, and that federal crack cocaine offenders who meet certain criteria established by the Commission and considered by the courts may have their sentences reduced to a level consistent with the Fair Sentencing Act of 2010.”

Not every federal crack cocaine offender in federal prison will be eligible for a lower sentence as a result of this decision. The Commission estimates, based on Fiscal Year 2010 sentencing data, that approximately 12,000 offenders may be eligible to seek a sentence reduction. The average sentence reduction for eligible offenders will be approximately 37 months, and the overall impact on the eligible offender population will occur incrementally over decades. The average sentence for these offenders, even after reduction, will remain about 10 years. The Bureau of Prisons estimates that retroactivity of the Fair Sentencing Act of 2010 amendment could result in a savings of over \$200 million within the first five years after retroactivity takes effect.

The Commission’s vote to give retroactive application to the proposed amendments to the federal sentencing guidelines does not give retroactive effect to the Fair Sentencing Act of 2010. Only Congress can make a statute retroactive. Many crack offenders will still be required under federal law to serve mandatory five- or 10-year sentences because of the amount of crack cocaine involved in their offenses.

A federal sentencing judge will make the final determination of whether an offender is eligible for a lower sentence and by how much that sentence should be lowered in accordance with instruction given by the Commission. The ultimate determination will be made only after consideration of many factors, including the Commission's instruction to consider whether reducing an offender's sentence would pose a risk to public safety. "The Commission is aware of concern that today's actions may negatively impact public safety. However, every potential offender must have his or her case considered by a federal district court judge in accordance with the Commission's policy statement, and with careful thought given to the offender's potential risk to public safety. The average sentence for a federal crack cocaine offender will remain significant at about 127 months," explained Judge Saris.

The Commission made its decision on retroactivity after significant deliberation and many years of research on federal cocaine sentencing policy. The Commission has issued four research reports to Congress on federal cocaine sentencing policy, testified numerous times before Congress, and held several public hearings on the topic of federal cocaine sentencing policy. The Commission solicited public comment on the issue of retroactivity and received over 43,500 written responses, the overwhelming majority of which were in favor of retroactivity. On June 1, 2011, the Commission held a full day hearing at which it heard from 20 experts and advocates within the criminal justice community. The Commission also carefully considered the views it received from Congress, the federal judiciary, and the Department of Justice.

The Commission considered a number of factors during its deliberations, including the purpose of the Commission's amendment implementing the Fair Sentencing Act of 2010, which lowers the penalties for crack cocaine offenses consistent with the Act, the limit on any reduction allowed by the amendment, whether it would be difficult for the courts to apply the reduction, and whether making the amendment retroactive would raise public safety concerns or cause unwarranted sentencing disparity in the federal system. Ultimately, the Commission determined that the statutory purposes of sentencing are best served by retroactive application of the amendment.

In December 2007, the Commission voted to give retroactive effect to its 2007 crack cocaine amendment effective March 3, 2008, and the process was smoothly coordinated among the courts, probation officers, U.S. Attorney offices, and the federal public defenders community. Since that time, the federal district courts have processed 25,515 motions, granting 16,433 motions for a reduced sentence and denying 9,082. The Commission has conducted a study of the recidivism rate of those offenders who received a reduced sentence as a result of the 2007 amendment as compared to a similarly situated group of federal crack cocaine offenders who served their normal term of imprisonment and determined that there is no statistically significant difference in recidivism rates between the two groups of offenders.

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